

confidentiality does not result in automatic sealing.

Protective orders serve legitimate purposes in both expediting discovery and protecting trade secrets, proprietary information, privileged communications, and personally sensitive data from inadvertent disclosure during the process of discovery; however, the confidentiality afforded under a Protective Order to discovery materials does not automatically extend to documents submitted to the court. At best, a Protective Order can require a party who desires to file a document marked confidential to seek an Order sealing or redacting that document before such filing.

While a court may seal any number of documents, proceedings, or applications for appropriate reasons, it simply cannot delegate that responsibility to the litigants by giving deference to protective orders. As a gatekeeper, a judge must consider sealing as the exception not the rule, Va. Dep't of State Police v. Wash. Post, 386 F.3d 567, 576 (4th Cir. 2004), give the public notice of its intent to seal, require counsel to provide valid reasons for such extraordinary relief, and then explain that decision as well as the reason why less drastic alternatives were not employed. The reason is simple: the public and the press have a co-extensive right to view and consider documents tendered a judge and/or jury when a dispute is brought in the ultimate public forum, a courtroom. Doe v. Public Citizen, 749 F.3d 246, 263 (4th Cir. 2014). While the court does not have in front of it a transcript of the trial, the court recalls dealing extensively with the issue of privilege as to Mr. Murchison's testimony. At a minimum, defendant needs to discuss any decisions this court issued at trial in seeking to seal the same witness's deposition testimony in support of a motion for a new trial.

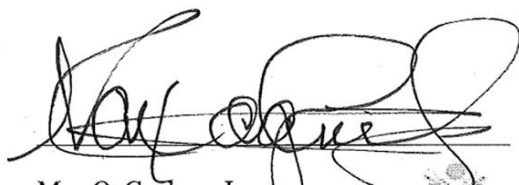
As mentioned above, the judges of this court, in conjunction with the public, attorneys, and members of Bar representing the press, developed Local Civil Rule 6.1, “Sealed Filings and Public Access,” to dispose of requests for sealing in an orderly manner. The rule contemplates that attorneys will designate materials as confidential, but makes it clear that such designation does not necessarily extend to materials “filed with the court.” L.Civ.R. 6.1(I).

Defendant’s request will be denied without prejudice. If defendant seeks to seal such deposition for purposes of requesting a new trial, he will need to reflect consultation, address the criteria provided by the local rule and prevailing case law, and discuss how any law of the case -- especially trial decisions involving this witness -- impact the request to seal.

ORDER

IT IS, THEREFORE, ORDERED that defendant David Griffin’s Motion to File Under Seal (#308) is **DENIED WITHOUT PREJUDICE**.

Signed: December 4, 2014



Max O. Cogburn Jr.
United States District Judge